

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anytime Fitness, LLC,

Case No. 15-cv-3792 (PAM/BRT)

Plaintiff,

v.

ORDER

James Nathan Fuller and Fitness
Ventures, LLC,


Defendants.

This matter is before the Court on the parties' Stipulation for Entry of Injunction Against Defendants and Dismissal with Prejudice. (Docket No. 10.) Pursuant to that Stipulation, the Court makes the following findings of fact:

A. *The ANYTIME FITNESS® System*

1. Anytime Fitness owns and licenses a system of operating co-ed fitness facilities, which offer a variety of fitness services under the commercial trade name and service mark ANYTIME FITNESS® (the "ANYTIME FITNESS® System"). The ANYTIME FITNESS® System has almost 2,200 operating franchise fitness centers located across the United States and Canada, and over 750 more locations around the world, which are owned and operated by hundreds of franchisees. Most franchised locations have between 500 and 900 members, and many locations have significantly more than 900 members. Franchisees offer Anytime Fitness's members a range of membership contracts, which may vary from month-to-month to multi-year contracts.

The typical membership contract is for one year. Most of Anytime Fitness's members visit the center regularly.

2. Anytime Fitness owns the trademark ANYTIME FITNESS®, (the "Running Man Logo"), and certain other trademarks, trade names, service marks, logos, designs, and commercial systems (collectively, the "Names and Marks"). 

Anytime Fitness has registered its Names and Marks on the Principal Register of the United States Patent and Trademark Office.

3. Anytime Fitness has developed the ANYTIME FITNESS® System, under which it licenses its franchisees to use the Names and Marks. Anytime Fitness has expended substantial sums of money and other resources in developing, promoting, and establishing the ANYTIME FITNESS® System. As a result of Anytime Fitness's efforts, customers have come to understand Anytime Fitness's Names and Marks as unique, distinctive symbols for the operation of Anytime Fitness's franchised locations and the services they offer.

4. Members are drawn to Anytime Fitness's franchised locations because of the Names and Marks that identify a high level of quality and service, the reciprocity members have with over 2,900 other Anytime Fitness clubs worldwide, access to Anytime Fitness's proprietary mobile application, and other benefits of being one of Anytime Fitness's members.

B. Nate Fuller and Fitness Ventures Execute the Franchise Agreement and Personal Guaranty

5. On November 2, 2010, Anytime Fitness and Fitness Ventures entered into a Franchise Agreement for the operation of an Anytime Fitness center to be located in Jemison, Alabama, (the “Franchise Agreement”). Section 2.A of the Franchise Agreement provides for a term of six years, with Fitness Ventures having the option to renew the Franchise Agreement for an additional five-year term.

6. Also on November 2, 2010, Anytime Fitness and Fitness Ventures entered into a Franchise Agreement Rider, attached to the Franchise Agreement, specifying that the Anytime Fitness center would be located at 24751 U.S. Highway 31, Jemison, Alabama 35085 (the “Jemison Anytime Fitness Center”).

7. When Fitness Ventures entered into the Franchise Agreement, Nate Fuller executed a Personal Guaranty and Agreement to be Bound Personally by the Terms and Conditions of the Franchise Agreement (the “Personal Guaranty”), attached to the Franchise Agreement, agreeing to “become surety and guarantor for the payment of all amounts and the performance of the covenants, terms and conditions in the [Franchise] Agreement” and “to be personally bound by each and every condition and term contained in the [Franchise] Agreement.”

8. Finally, also on November 2, 2010, Anytime Fitness and Fitness Ventures entered into a second, separate franchise agreement for the operation of another Anytime Fitness center to be located at 136 Market Center Drive, Alabaster, Alabama 35007 (the

“Alabaster Anytime Fitness Center”). The Alabaster Anytime Fitness Center has since closed, and the corresponding franchise agreement has been terminated.

C. Nate Fuller and Fitness Ventures Obtain the Benefits of the ANYTIME FITNESS® System Under the Terms of the Franchise Agreement

9. As an Anytime Fitness® franchisee under the Franchise Agreement, Nate Fuller and Fitness Ventures obtained, among other things, the use of Anytime Fitness’s Names and Marks, marketing and advertising services, training programs, and highly confidential proprietary manual and other materials, including computer software, to be used in connection with the operation of the fitness center.

10. Nate Fuller and Fitness Ventures also received, as an Anytime Fitness® franchisee, the information and know how to get their fitness business up and running, and then to successfully operate it, including: what equipment to purchase, club layout, the “menu” of services offered and the recommended pricing of those services, access to Anytime Fitness’s suppliers, training in the methods of operating a co-ed fitness business, Anytime Fitness’s membership agreement, which Anytime Fitness prepared for distribution exclusively to Anytime Fitness® franchisees, training in the promotion and sales of fitness club memberships, access to Anytime Health, which is an interactive health website provided to Anytime Fitness’s members, access to comprehensive security system and related technology that allows for proper security for a co-ed fitness business, and numerous other trade practices of Anytime Fitness and the ANYTIME FITNESS® System.

11. Another feature offered by Anytime Fitness exclusively to its franchisees is the internet-based “Dashboard.” The Dashboard provides a means for Anytime Fitness to quickly communicate with its franchisees and is now the primary means by which Anytime Fitness does so. The Dashboard allows franchisees the opportunity to instantly share ideas with each other without access to their ideas by competitors. The Dashboard contains Anytime Fitness’s operations manual and other propriety information, including information relating to personal training programs, virtual roundtables on such topics as getting started, club operations, marketing, club culture, corporate partnerships, customer service standards, competitors, technical issues, “Ask Corporate,” Anytime Health, personal training, and the Franchise Advisory Council, which is a committee comprised of Anytime Fitness’s franchisees.

12. Nate Fuller and Fitness Ventures had the benefit of learning the entire ANYTIME FITNESS® System of methods, procedures, standards, specifications, and the trademarks within the model that Anytime Fitness created.

13. Third parties who have tried to adopt Anytime Fitness’s businesses model have added services or space that add expense and destroy the model, including features such as pools, saunas, and daycare centers. The ANYTIME FITNESS® System works, and its franchisees learn the ANYTIME FITNESS® System, and therefore have significant advantages over other competitors. Anytime Fitness teaches its franchisees, just as it taught Nate Fuller and Fitness Ventures, how to open and operate a successful fitness center.

14. As set forth in the Franchise Agreement, Nate Fuller and Fitness Ventures have acknowledged that the information relating to the ANYTIME FITNESS® System is confidential. Section 10.A of the Franchise Agreement states:

You acknowledge that all the information you have now or obtain in the future concerning the System and the concepts and methods of promotion franchised hereunder is derived from us pursuant to this Agreement, and that you will treat such information in confidence. You agree never to, directly or indirectly, engage in or abet the misappropriation . . . or the disclosure, divulgence, or distribution of all or any part of the System You will disclose such confidential information only to such of your employees as must have access to it in order to operate your Anytime Fitness Center and use it only for the operation of your Anytime Fitness Center. At our request, you will be required to deliver to us confidentiality agreements and noncompete agreements in a form satisfactory to us from your owners, the spouses of your owners, and your employees. The scope of the confidentiality agreements shall be consistent with the provisions of this Section 10.A. and the scope of the noncompete agreements shall be consistent with the provisions of Section 17 of this Agreement.

15. In light of the confidential information that Anytime Fitness shared with Nate Fuller and Fitness Ventures, in addition to other valuable services and consideration provided by Anytime Fitness, they agreed to not compete with Anytime Fitness during the Franchise Agreement's term. Section 17.A of the Franchise Agreement provides:

During Term. You will not, directly or indirectly, during the term of this Agreement, on your own account or as an employee, consultant, partner, officer, director, shareholder or member of any other person, firm, entity, partnership, corporation or company, own, operate, lease, franchise, engage in, be connected with, have any interest in, or assist any person or entity engaged in owning, operating, or managing any other fitness center, wherever located, whether within the Protected Territory or elsewhere.

16. Nate Fuller and Fitness Ventures further agreed not to compete with Anytime Fitness for a period of two years after the termination of the Franchise Agreement. Section 17.B of the Franchise Agreement provides:

After Expiration, Termination, or Transfer. You will not, directly or indirectly for a period of two (2) years after the transfer by you, or the expiration or termination of this Agreement, on your own account or as an employee, consultant, partner, officer, director, shareholder, lender, or joint venturer of any other person, firm, entity, partnership, corporation or company, own, operate, lease to or lease from, franchise, conduct, engage in, be connected with, have any interest in or assist any person or entity engaged in any fitness center, which is located within the Protected Territory or within a twenty (20) mile radius of any Anytime Fitness center, wherever located, whether within the Protected Territory or elsewhere; provided, however, that in metropolitan areas having a population of more than 50,000 persons, the forgoing twenty (20) mile radius will be limited to a radius of five (5) miles from any Anytime Fitness center (including the one you formerly operated under this agreement).

D. Nate Fuller and Fitness Ventures Close the Alabaster Anytime Fitness Center and Attempt to Reopen It As A Competitive Gym Under the Name “Fit 24”

17. On November 1, 2011, Nate Fuller and Fitness Ventures closed the Alabaster Anytime Fitness Center, providing only days’ notice to Anytime Fitness. Shortly thereafter, the Alabaster Anytime Fitness Center reopened as a competitive gym under the name “Fit 24” (the “Fit 24 Center”).

18. Anytime Fitness learned that the Fit 24 Center was being operated by an individual named Keith Davis and his corporation, Fit 24, LLC, in which Nate Fuller had acquired an interest. According to Mr. Davis, Nate Fuller was operating the Jemison Anytime Fitness Center, while Mr. Davis was operating the Fit 24 Center, but members

of the Jemison Anytime Fitness Center could visit the Fit 24 Center without paying for both memberships so long as they contacted him first.

19. Nate Fuller and Fitness Ventures provided assistance to Mr. Davis and Fit 24 in setting up and operating the Fit 24 Center, in the form of financing and confidential information misappropriated from the ANYTIME FITNESS® System.

20. Anytime Fitness sent Nate Fuller a letter demanding that he cease and desist his ownership of Fit 24, as well as any other involvement he had with the Fit 24 Center. Nate Fuller agreed, signing an Affidavit in November 2011 providing as follows:

J. NATHAN FULLER, being duly sworn, deposes and says:

1. That he is over the age of eighteen and of sound mind;
2. That he has personal knowledge of the facts herein;
3. That he has sold his interest in Fit 24, LLC
4. That he has no more interest, ownership, or secure, in Insane Fitness, LLC.
5. That he has no interest, ownership or secured, in any LLC or corporation owned by Keith Davis.

21. Based on Nate Fuller's agreement to cease and desist his ownership of Fit 24, as well as any other involvement he had with the Fit 24 Center, Anytime Fitness believed that Nate Fuller and Fitness Ventures would respect their obligations under the Franchise Agreement.

22. According to the Alabama Secretary of State's Government Records, however, Nate Fuller remains listed as a manager and organizer of Fit 24. In fact, in April 2015, Fit 24 filed an annual report listing Nate Fuller as a manager.

E. Nate Fuller and Fitness Ventures Once Again Acquire an Interest In, and Become Involved With, Another Competitive Gym Under the Name "Gym Time"

23. On September 21, 2015, Anytime Fitness learned that Fitness Ventures and Nate Fuller had once again acquired an interest in, and become involved with, another competitive gym.

24. More specifically, Anytime Fitness learned that Nate Fuller's brother, John Fuller, and his corporation Gym Time, Inc. recently opened a gym called "Gym Time" at 244 1st Street Southwest, Alabaster, Alabama 35007 (the "Gym Time Center"). According to the Alabama Secretary of State's Government Records, John Fuller is listed the incorporator and director of Gym Time.

25. Nate Fuller funded one-half of Gym Time, and as a result, has acquired an interest in Gym Time. Furthermore, Nate Fuller and his wife, Nicole Fuller, have provided assistance to John Fuller in setting up and operating the Gym Time Center using confidential information misappropriated from the ANYTIME FITNESS® System.

26. To this effect, the Gym Time Center has a number of features that bear remarkable resemblance to the ANYTIME FITNESS® System. The Gym Time Center's brand and Anytime Fitness's Names and Marks both use the word "time" and a purple color scheme. Like the ANYTIME FITNESS® System, the Gym Time Center advertises itself as a fitness center that has "24 HOUR ACCESS" and is open "7 DAYS/WEEK." The Gym Time Center also uses similar "Life Fitness" brand equipment that is part of the ANYTIME FITNESS® System.

27. Nate Fuller and Fitness Ventures were well aware of their obligations not to compete with Anytime Fitness, as they had previously agreed not to do so after acquiring an ownership interest in Fit 24 and becoming involved with the Fit 24 Center.

28. In Section 17.E of the Franchise Agreement, Nate Fuller and Fitness Ventures agreed that Anytime Fitness would have the right to petition the Court for injunctive relief to enforce the provisions of the Franchise Agreement relating to his covenant not to compete.

29. Nate Fuller and Fitness Ventures further agreed, in Section 17.E of the Franchise Agreement, that if they were found to have violated Section 17.B of the Franchise Agreement, the period of time during which the restriction will remain in effect will be extended until two years after the restriction ceases to be violated.

30. In Section 18.A of the Franchise Agreement, Nate Fuller and Fitness Ventures agreed that if Anytime Fitness is “successful in obtaining an injunction, or any other judicial relief or order . . . [they] will pay [Anytime Fitness] an amount equal to all of [Anytime Fitness’s] costs of prosecuting and/or defending the action, including reasonable attorneys’ fees, costs of investigation, and court costs, and other litigation expenses.”

31. The population of Alabaster, Alabama does not exceed 50,000 persons.

32. The population of Jemison, Alabama does not exceed 50,000 persons.

33. The Gym Time Center is less than eleven miles away from an Anytime Fitness® center located in Pelham, Alabama.

34. The Jemison Anytime Fitness Center, Gym Time Center, and Fit 24 Center, formerly known as the Alabaster Anytime Fitness Center, are all located within a twenty mile radius of each other.

35. In October, 2015, Anytime Fitness commenced this lawsuit resulting from Defendants' violation of their covenants not to compete with Anytime Fitness, among other things.

36. The parties agree to entry of this Order and otherwise reserve their respective rights.

Accordingly, **IT IS HEREBY ORDERED** that:

1. This action is **DISMISSED with prejudice**.
2. The stipulated injunction set forth herein is hereby **GRANTED** in favor of Plaintiff Anytime Fitness.
3. Commencing immediately, and continuing during the term of the Franchise Agreement, Defendants are prohibited from, directly or indirectly, on their own account or as an employee, consultant, partner, officer, director, shareholder or member of any other person, firm, entity, partnership, corporation or company, own, operate, lease, franchise, engage in, be connected with, have any interest in, or assist any person or entity engaged in owning, operating, or managing any other fitness center, wherever located, whether within the Protected Territory, or elsewhere. Defendants are specifically enjoined from having any direct or indirect interest or involvement in any fitness centers owned or operated by Keith Davis, Fit 24, LLC, John Fuller, or Gym Time, Inc. (the "Competitive Fitness Centers").

4. For a period of two years after termination of the Franchise Agreement, and continuing until two years after Section 17.B of the Franchise Agreement ceases to be violated, Defendants are prohibited from, directly or indirectly, on their own account or as an employee, consultant, partner, officer, director, shareholder, lender, or joint venturer of any other person, firm, entity, partnership, corporation or company, owning, operating, leasing, franchising, conducting, engaging in, being connected with, having any interest in or assisting any person or entity engaged in any fitness center, which is located within the Protected Territory as defined in the Franchise Agreements or within a fifteen (15) mile radius of any ANYTIME FITNESS® center, wherever located, whether within the Protected Territory or elsewhere; provided, however, that in cities having a population of more than 50,000 persons, the foregoing fifteen (15) mile radius restriction will be limited to a radius of five (5) miles from any Anytime Fitness center. Defendants are specifically enjoined from having any direct or indirect interest or involvement in the Competitive Fitness Centers.

5. James Nathan Fuller shall take immediate action to cease his position as a manager and organizer of Fit 24, LLC and have his name removed from any documents filed with the Alabama Secretary of State's Government Records to that effect.

6. Defendants shall take immediate action to divest themselves of any interest in the Competitive Fitness Centers, including but not limited to obtaining repayment of any loans or capitalization, refunds of any amounts paid under any stock purchase or membership agreements, or otherwise redeeming any interest that they have in the

Competitive Fitness Centers or obligations that the Competitive Fitness Centers owe to Defendants.

7. Defendants shall provide a statement to Anytime Fitness's counsel within seven days (1) identifying any amounts that they provided to the Competitive Fitness Centers; (2) describing any assistance, documents, or information that they provided to the Competitive Fitness Centers; (3) stating that they have ceased any and all ownership, operation, or involvement with the Competitive Fitness Centers; and (4) and the Competitive Fitness Centers do not have any remaining obligations to Defendants.

8. Unless expressly modified in this Order, all post-termination obligations in the Franchise Agreements shall continue to be in full force and effect, including but not limited to all obligations not to disclose Anytime Fitness's confidential information and all post-term obligations not to compete with Anytime Fitness.

9. This injunction shall be effective immediately. No bond shall be required.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 12, 2016

s/Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge